IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

NOTICE OF MOTION NO. 11 OF 2006

IN

NOTICE NO. N/121 OF 2005

Re: Ved Prakash Agarwal
.....Judgment Debtor

Ex-Parte :

M/s. Rama Petrochemicals Ltd
.....Judgment Creditors

Mr. Dinesh Purandare i/by. Negandhi Shah and Himayatullah for judgment debtor.
Mr.C. Ardeshir with Jayesh Vyas
i/by. Billawala and Co.
for judgment creditor.

CORAM: S.U. KAMDAR, J.

DATED: 25TH APRIL, 2006.

P.C. :

1. The present Notice of Motion has been taken out on three grounds.

2. First, on the ground of territorial jurisdiction contending that this court has no jurisdiction to entertain the Insolvency

proceedings. Insupport of the aforesaid contention the learned counsel for the judgment debtor has relied upon the judgment of the learned single judge of the Madras High Court in the case of **T.J. Raju vs. P.R. Neelakantan reported in AIR 1991 Madras 24** and division Bench judgment of the Bombay High Court in the case of **Ganeshnarayan Onkarmal vs. Raja Pratapgirji Narsingirji reported in AIR 1938 Bombay 181.** In so far as the judgment of the Madras High Court is concerned taking the view that the issue of jurisdiction can be determined at the stage of application for setting aside of the insolvency notice, I am of the view that in the light of the judgment of the Division Bench of this court in the case of **Ramanlal Khanna vs. Industrial Finance Corpn. of India Ltd decided in Appeal No. 683 of 1993** and other connected appeals being order and judgment dated 17.9.1993 I am not inclined to accept the view which has been laid down by the learned Single Judge of the Madras High court. The view of this court as amplified by the division bench judgment is

that the issue of jurisdiction need not be entertained at the stage of insolvency notice and can be only determined in the petition for adjudication under Section 9 of the Insolvency Act. In my opinion on the plain reading of the provisions of Section 17 it is clear that the jurisdictional issue can be raised only at the time of adjudication proceedings which commences by filing of the petition. In that light of the view, the contrary view taken by the Madras High Court that notice is a step in aid for institution of the petition and therefore lack of territorial jurisdiction can be ground for setting aside the said notice cannot be accepted.

3. The next contention which has been raised by the learned counsel for the judgment debtor is that the notice is not served upon the petitioner. However the prayers in the motion itself shows that the said notice has been served on the judgment debtor though he contends that he has received a copy thereof from the

bankers on 17.11.2005. In my opinion under the provision of Section 9 sub-section 5 an application for setting aside insolvency notice can only be made only when a person is served with the Insolvency notice. There is no dispute that the present application is for setting aside the notice. If that is so then obviously the notice is served on the judgment debtor and accordingly the present notice of Motion has been taken out for setting aside the notice. If notice is not served on the judgment debtor then there is no question of making any application for setting aside the notice under section 9 sub-section 5. In that light of the matter the contention raised by the learned counsel for the judgment debtor about non-service of the notice is required to be rejected.

4. The third and the last contention raised by the learned counsel for the judgment debtor is that the judgment debtor is a guarantor inrespect of a company known as Prakash Industries Ltd and that Prakash

Industries Ltd is the principal borrower who has a set off against the judgment creditor and therefore the present Insolvency notice should be set aside. The said submission cannot be accepted firstly because the present proceedings are not against Prakash Industries Limited. If there is no set-off claim in favour of the judgment debtor then it is only the party who can claim the set off, can raise an issue set-off as ground for setting aside the Insolvency notice. The applicant is admittedly a guarantor and has no claim of set off in his favour and thus in my opinion cannot raise the aforesaid objection. In that light of the matter there is no substance in the aforesaid Notice of Motion. The same accordingly fails and thus dismissed.

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